UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

FRED MEYER, INC.[1]

Employer

and Case 19-RD-3448

VICKY ARNOLD, an Individual

Petitioner

and

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1439, chartered by UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, CLC[2]

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[3] in this proceeding[4] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

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1 The name of the Employer appears as corrected at hearing.
2 The name of the Union appears as corrected at hearing.
3 No briefs were filed.
4 The Employer, although timely served with the Notice of Hearing, did not appear at hearing.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in retail sales of groceries and non-food items at numerous locations in several states, including its store in Wenatchee, Washington. The petition seeks decertification in a unit of approximately 26 combination food/nonfood checkstand department employees employed in the Employer's store located at 11 West Grant, East Wenatchee, Washington. The sole issue herein is whether the petition is barred by the Employer's voluntary recognition of the Union as the collective bargaining representative of the unit employees.

The Employer and the Union have had a bargaining relationship for many years involving other units of employees employed at the Employer's stores in Spokane and Yakima, Washington. The Wenatchee store is a new store.

It is undisputed in the record that, pursuant to a card check on March 30, 2000, the Employer voluntarily recognized the Union by letter dated April 17, 2000. The instant petition was filed nine days later on April 26. The Employer had earlier recognized the Union as the bargaining representative of its grocery and meat employees in the Wenatchee store, also on the basis of a card check.

On April 12, Sue Bonnett, secretary-treasurer of the Union, and Carl Wojciechowski, the Employer's group vice president of human resources, had a telephone conversation in which they discussed, among other things, pension contributions for the instant unit employees. On April 17, Wojciechowski sent a letter to Bonnett, in which he confirmed the results of the card check, stated that the Employer recognizes the Union as the bargaining representative of the unit employees, and further stated:

> We also discussed the effective date for health and welfare contributions and pension contributions. It was agreed that health and welfare contributions would begin April 1, 2000, on March hours, and pension contributions would begin May 1, 2000, based on April hours.
>
> I am currently drafting the agreement in accordance with our understandings and will be submitting it to you in the near future.

Bonnett and Wojciechowski had at least two additional telephone conversations regarding the agreement. They were unable to schedule any face-to-face meetings due to other commitments. On May 1, 2000, the Employer submitted a complete written agreement to the Union, which, at the time of the hearing, the Union had signed and returned to the Employer.

The Board's policy regarding recognition bar is stated in *Livent Realty*, 328 NLRB No. 1 (1999):

> In determining whether voluntary recognition of a union should bar a petition by a rival union, the Board seeks to balance the competing interests of effectuating employee free choice, while promoting voluntary recognition and protecting the stability of collective-bargaining relationships. *Smith's Food & Drug Centers*, 320 NLRB 844, 846 (1996). Where an employer has voluntarily recognized a union as the representative of its employees in good faith and based upon a demonstrated showing of majority status, that recognition serves as a bar for a reasonable period of time to allow the parties to bargain free from challenge to the union's majority status. *Id*. at 845. "What constitutes a 'reasonable time' is not measured by the number of days or months spent in bargaining, but by what transpired and what was accomplished in the bargaining sessions." *Royal Coach*

> *Lines*, 282 NLRB 1037, 1038 (1987). In particular, where the parties are negotiating a first contract, the Board recognizes the attendant problems of establishing initial procedures, rights, wage scales, and benefits in determining whether a reasonable time has elapsed. *N.J. MacDonald & Sons, Inc*., 155 NLRB 67, 71-72 (1965). [Footnote omitted.]

In *Livent Realty*, the Board found that nine months did not constitute a "reasonable time." In *Rockwell International Corporation*, 220 NLRB 1262 (1975), a decertification petition was filed two weeks after the employer voluntarily recognized the union based on a card check. At the time of the hearing in that case, the parties had met three times in negotiations, but no agreement had been reached. The Board found that the two weeks which had elapsed between the date of recognition and the date on which the petition was filed did not constitute a reasonable period of time to permit the parties to attempt to negotiate an agreement.

Here, I conclude that the nine days which elapsed between the date on which the Employer voluntarily recognized the Union and the date on which the petition was filed was indisputably an insufficient period of time to permit the parties to attempt to negotiate an agreement. I find this to be so even though the parties have had a history of bargaining with each other regarding other units of the Employer's employees, and even though it appears that there was only one issue in dispute, and the parties were remarkably expeditious in their undertakings to reach an agreement.

I shall, therefore, dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 8, 2000.

DATED at Seattle, Washington, this 25th day of May, 2000.

/s/ PAUL EGGERT

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Paul Egger, Regional Director
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